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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO JOHN DISARRO, JR.,

Defendant and Appellant.

D075408

(Super. Ct. No. SCD273822)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Kelly E. DuFord, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Mario John Disarro, Jr., appeals from a judgment following a contested probation revocation hearing. His appointed counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and

*Anders v. California* (1967) 386 U.S. 738 (*Anders*). We informed Disarro of his right to personally file a brief, and he has not done so. Based on our independent review of the record, we find no reasonably arguable appellate issues and accordingly, affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In September 2017, the San Diego District Attorney filed a five-count complaint against Disarro, including the offenses of (1) unlawfully entering an inhabited building with the intent to commit theft (burglary count; Pen. Code, §§ 459, 460, subd. (a));<sup>1</sup> and (2) acquiring and retaining the personal identifying information of another person with intent to defraud (identity theft count; § 530.5, subd. (c)(1)). Disarro pleaded guilty to the burglary and identity theft counts, and the remaining charges were dismissed. In November 2017, the court suspended the imposition of sentence and ordered Disarro to complete three years of formal probation.

Among the conditions of his probation were that he must "[n]ot knowingly use/possess any stolen, forged, counterfeit or fraudulent documents" (condition 6q), and "not knowingly use or possess any controlled substance without a valid prescription" (condition 9c). The court additionally imposed conditions that Disarro must "[f]ollow such course of conduct that the [probation officer] communicates" to him (condition 6b), and "not unlawfully use force, threats, or violence on another person" (condition 10a).

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<sup>1</sup> Further unspecified statutory references are to the Penal Code.

*First Probation Revocation—Violations of Conditions 6q and 9c*

In a probation report dated October 12, 2018, the probation department alleged two probation violations by Disarro—of conditions 6q and 9c—based on (1) his possession of counterfeit \$20.00 bills, and (2) evidence of his drug use. Although not an alleged probation violation, the probation report included a section entitled "additional information," relaying that Disarro had potentially engaged in some threatening conduct toward the owner of the sober living house (house) where Disarro was a tenant. The probation officer noted that she had only been assigned to supervise Disarro's probation for about one month and was still investigating the housing issues.

At an October 16, 2018 probation violation hearing, Disarro waived his right to an evidentiary hearing and admitted the violations of conditions 6q and 9c. The court revoked probation and reinstated it on the same terms and conditions.

*Second Probation Revocation—Violation of Conditions 6b and 10a*

Disarro had a contentious relationship with both the house manager and owner, who lived across the street from him. By October 2018, the owner had obtained a restraining order against Disarro due to various incidents.

Early in the morning on October 17, 2018, after being released from jail, Disarro went to the house. The manager called Disarro's probation officer to report Disarro's presence there. Disarro's belongings were mostly packed up, and the manager did not believe Disarro was authorized to remain at the house.

By 8:10 a.m., the probation officer spoke to Disarro on the phone. Sensing an escalating situation and rising tensions, the officer directed Disarro to "immediately"

leave the residence and report to the probation office where they could talk about alternative housing. Disarro responded that he needed three hours to "get his affairs together" before he could report to probation, to which his probation officer directed him approximately four more times to leave "immediately."

Around 8:26 a.m., the probation officer received another call from the house manager. With his cell phone on "speakerphone," the manager walked into Disarro's hearing presence. Through the phone, the probation officer began to hear indiscriminate yelling between Disarro and the manager. Disarro tried to knock the phone out of the manager's hand, cursed at him, and said, "Oh, motherfucker, I will hurt you." The manager believed Disarro might be under the influence of drugs, felt threatened, and backed up out of the room. The probation officer told the manager to call the police if he felt threatened and to wait across the street. Police arrived and arrested Disarro for violating his probation officer's directives and threatening another person.

Subsequently, the probation department obtained more information about the basis for the owner's restraining order against Disarro. There had been several incidents, including one where Disarro threatened to "kick [the owner's] ass and severely hurt [him]" after the owner served an eviction notice on Disarro and a second incident where he threatened the owner with bolt cutters.

#### *Contested Probation Revocation Hearing*

Disarro was given notice to show cause why his probation should not be revoked due to violations of conditions 6b and 10a (i.e., for disobeying his probation officer's directives and using unlawful threats against another person). The People provided

Disarro with everything they had learned through discovery in the matter, including the owner's reasons for obtaining a restraining order.

At the contested evidentiary hearing on January 11, 2019, the People called the house manager, owner, and probation officer to testify. Disarro called two witnesses to testify in his defense, a housemate and a roommate. Addressing defense counsel's objections and arguments, the trial court explained why Disarro would not be punished "twice" for probation violations since the first probation revocation related to entirely different conditions; Disarro admitted those violations based on possessing counterfeit bills and drugs; and there had been no factual findings regarding any threatening conduct. The court also discussed that Disarro received sufficient notice, consistent with due process, regarding the basis for the latest allegations regarding conditions 6b and 10a.

Furthermore, the court found Disarro violated conditions 6b and 10a based on the events of October 17, 2018, as well as certain prior threats against the owner. The court explained how the probation officer acted reasonably on October 17 given the escalating situation at the sober living house and that Disarro failed to comply with her directives.

At the sentencing hearing, the court imposed the middle term of four years in state prison on Disarro's burglary count with 625 days of total credit for time served, time served on his identity theft count, a \$300 restitution fine (§ 1202.4, subd. (b)), and an additional restitution fine of \$300 (§ 1202.45, suspended unless parole revoked). Having revoked probation, the court lifted its previous stay on Disarro's probation revocation restitution fine (§ 1202.44). This appeal followed.

## DISCUSSION

Disarro's appellate counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, setting forth a statement of the case and statement of facts, urging no grounds for reversal of the judgment, and asking this court to independently review the record for error. Pursuant to *Anders*, counsel identifies the following issues to assist the court in its search of the record for error:

- (1) whether the probation officer's directive was valid and reasonable;
- (2) whether the defendant had sufficient notice of the grounds of his probation violations to satisfy due process; and
- (3) whether the court's consideration of evidence of threats against the house owner violated the notion of collateral estoppel and prejudiced defendant.

We have reviewed the record consistent with the requirements of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738; considered the issues listed by appellate counsel; and found no reasonably arguable grounds to reverse or modify the judgment. Disarro has been represented by competent counsel on appeal.

## DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

DATO, J.